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6   UNITED STATES DISTRICT COURT

7   DISTRICT OF NEVADA

8   * * *

9   WILLIAM R. LYONS,   Case No. 3:13-cv-00250-MMD-WGC

10   Plaintiff,   ORDER
        v.
11

12   SOCIAL SECURITY ADMINISTRATION,
    et al.,
13
                          Defendants.
14

15   Before the Court is the Report and Recommendation ("R&R") of the Honorable

16   William G. Cobb, United States Magistrate Judge, entered on July 25, 2013 (dkt. no. 5),

17   regarding Plaintiff's Motion for Leave to Proceed *in forma pauperis* (dkt no. 4) and

18   Plaintiff's Complaint (dkt. no. 1-1). The R&R recommends that Plaintiff's Application for

19   Leave to Proceed *in forma pauperis* be granted, but that Plaintiff's Complaint be

20   dismissed with prejudice.

21   Plaintiff William R. Lyons filed an objection to the R&R on August 7, 2013. (Dkt.

22   no. 6.) This Court "may accept, reject, or modify, in whole or in part, the findings or

23   recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely

24   objects to a magistrate judge's report and recommendation, then the court is required to

25   "make a *de novo* determination of those portions of the [report and recommendation] to

26   which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however,

27   the court is not required to conduct "any review at all . . . of any issue that is not the

28   subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth

1   Circuit has recognized that a district court is not required to review a magistrate judge's

2   report and recommendation where no objections have been filed. *See United States v.*

3   *Reyna–Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review

4   employed by the district court when reviewing a report and recommendation to which no

5   objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.

6   Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that

7   district courts are not required to review "any issue that is not the subject of an

8   objection."). Thus, if there is no objection to a magistrate judge's recommendation, then

9   the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.

10 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to

11 which no objection was filed). The Court, considering Plaintiff's Objection to Judge

12 Cobb's ruling dismissing the Complaint with prejudice, engages in a *de novo* review to

13 determine whether to adopt Magistrate Judge Cobb's R&R.

14   Plaintiff's Complaint seeks $39,000 in retroactive Supplemental Security Income

15 ("SSI") from the Social Security Administration ("SSA") for benefits Plaintiff was denied

16 between 2001 and 2003. In his correspondence with the SSA, attached to Plaintiff's

17 Complaint, the SSA indicated that the "law prohibits retroactive benefits to beneficiaries

18 or their representative payees while the beneficiary is a prisoner" and that Plaintiff or the

19 prison should contact SSA before Plaintiff is released. (Dkt. no. 1-1 at 19.) The R&R

20 likewise found that under the "No Social Security Benefits for Prisoners Act of 2009,"

21 which became Public Law 111-115, the SSA is prohibited from paying retroactive

22 benefits to beneficiaries or terminated beneficiaries while they are incarcerated. As it is

23 undisputed that the benefits Plaintiff seeks are retroactive SSI benefits and that Plaintiff

24 is currently incarcerated, the Court finds that Plaintiff may not receive retroactive SSI

25 benefits at this time. The Court therefore finds that Plaintiff had failed to state a claim

26 upon which relief may be granted.

27   It is hereby ordered that Magistrate Judge Cobb's Report and Recommendation

28 (dkt. no. 5) is accepted and adopted.

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It is therefore ordered that Plaintiff's Motion for Leave to Proceed *in forma pauperis* (dkt no. 4) is granted.

It is further ordered that Plaintiff's Complaint (dkt. no. 1-1) is dismissed with prejudice.

The Clerk of the Court is instructed to close this case.

DATED THIS 16th day of April 2014.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE